

**IN THE UNITED STATES FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA

VS.

CIVIL ACTION NO.: 1:08CR23

JOHN KAPENEKAS

ORDER

Following the Fifth Circuit’s rejection of his first appeal, petitioner Kapenekas has moved for this court to issue an amended Certificate of Appealability or a new Certificate of Appealability. A prisoner seeking a COA “need only demonstrate a substantial showing of the denial of a constitutional right.” *Miller-El v. Cockrell* , 537 U.S. 322, 327 (1997). A petitioner satisfies this standard by demonstrating that “jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Id.* This court has already certified for appeal the one constitutional issue which it regarded - perhaps generously - as meriting “encouragement to proceed further.” The Fifth Circuit has decided that issue adversely to petitioner, and he now seeks for this court to certify a separate issue, relating to the sufficiency of his indictment. The court concludes, for essentially the reasons stated by the government in its brief, that this issue does not merit the issuance of a Certificate of Appealability, and petitioners’ motion will therefore be denied.

It is therefore ordered that petitioner’s motion for an amended Certificate of Appealability is denied.

SO ORDERED, this the 9th day of March, 2011.

/s/ Michael P. Mills
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI